

David Karl Gross, ABA #9611065
Birch Horton Bittner & Cherot
510 L Street, Suite 700
Anchorage, Alaska 99501
Telephone: 907.276.1550
dgross@bhb.com

Edward E. McNally, ABA #9203003
Marc E. Kasowitz (*Pro Hac Vice To Be Filed*)
Hector Torres (*Pro Hac Vice To Be Filed*)
Kasowitz Benson Torres LLP
1633 Broadway
New York, New York 10019
Telephone: 212.506.1700
emcnally@kasowitz.com
mkasowitz@kasowitz.com
htorres@kasowitz.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

KLOOSTERBOER INTERNATIONAL
FORWARDING LLC and ALASKA
REEFER MANAGEMENT LLC,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,
U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. CUSTOMS AND
BORDER PROTECTION, and TROY A.
MILLER, U.S. Customs and Border
Protection Acting Commissioner, in his
official capacity,

Defendants.

Case No.: 3:21-cv-____ (____)

DECLARATION OF JOHN CONNELLY

Pursuant to 28 U.S.C. § 1746, I, John Connelly, declare as follows:

1. I am the President of the National Fisheries Institute (“NFI”), a non-profit organization dedicated to advocating for the seafood industry and providing education about seafood safety, sustainability, and nutrition. I submit this declaration in support of Plaintiffs’ motion for a Temporary Restraining Order and Preliminary Injunction. I have personal knowledge of the facts set forth herein.

2. NFI has more than 200 members, comprised of suppliers, retailers, restaurants, grocers, producers, importers, distributors, cold storage providers, harvesters, and processors. What makes NFI a unique trade association is that it not only represents the suppliers of material, but also those buyers who face the consumer, including further processors, brand owners and retailers of fish. NFI is uniquely qualified to represent the end-to-end impacts of this action by U.S. Customs and Border Protection (“CBP”) all the way through to the consumer. Some of the major Alaska seafood processors that are members of NFI and engaged in the Alaska Pollock Fishery include:

- American Seafoods Company: a harvester of pollock and cod in the North Pacific;
- Arctic Storm Management Company: a harvester of pollock and cod in the North Pacific;
- Glacier Fish Company: a harvester of pollock in the North Pacific;
- Icicle Seafoods, Inc.: a harvester and processor of salmon in Alaska;

- Trident Seafoods Corporation: a harvester and processor of pollock, cod, and salmon in the North Pacific and/or Alaska; and
- Unisea: a processor of pollock and cod in Unalaska, Alaska.

These diverse member companies bring delicious fish to American families. Collectively, our membership employs approximately 20,000 Alaskan workers and more than 200,000 workers throughout the U.S.

3. NFI and its members are committed to sustainable management of our oceans and being good stewards of our environment by endorsing the United Nations Principles for Responsible Fisheries. We believe that our investment in our oceans today will provide our children and future generations the health benefits of a plentiful supply of fish and seafood tomorrow. NFI promotes the U.S. Dietary Guidelines for Americans, which recommend that consumers include fish and shellfish in their diets twice per week for longer, healthier lives.

4. NFI was alerted on or about August 20, 2021 that CBP began to issue notices of penalties to certain of our members for alleged violations of the Jones Act (“Penalty Notices”), in connection with the shipment of frozen seafood products from Dutch Harbor, Alaska to Calais, Maine via Bayside, New Brunswick, Canada, and coordinated and serviced by Alaska Reefer Management LLC (“ARM”) and Kloosterboer International Forwarding LLC (“KIF”) through third-party service partners (the “ARM/KIF Transportation System”).

5. NFI has also been informed that the Penalty Notices issued to our members and other companies in the chain of distribution are now in the range of hundreds of millions of dollars. These Penalty Notices have caused a major disruption to the supply chain for frozen seafood transported to the Eastern U.S., that has not only brought delivery of many of our members' products to a stop, but if continued, threatens the industry, including other members' further processing operations, their customers' businesses (many of whom are also members of NFI), and the availability of Alaska Pollock, Pacific Cod, and other Alaska sourced seafood to American consumers.

6. U.S. retailers and restaurants rely on frozen fish for "just-in-time" delivery, which refers to the delivery of seafood products to customers for their immediate use, so that they do not need to store the seafood product for long periods of time. The entire industry depends on the availability of a reliable transportation process that timely provides such deliveries. Most of America's prominent Quick Service Restaurants ("QSRs") rely on Alaska Pollock moving through these supply lines for the fish sandwiches they serve to tens of millions of Americans.

7. For example, without a quick return of transport of these products, many of our members who are suppliers to the country's most prominent QSRs, and their flagship fish sandwiches, will exhaust their supply of certain raw material fish in a matter of weeks.

8. If supply lines do not reopen quickly, many QSRs and other restaurants will begin sourcing fish product from foreign suppliers such as Russia and China. This foreign product would be an obvious substitution choice for existing domestic product. This could

displace Wild Alaska Pollock in the U.S. market over the long term, impacting tens of thousands of American workers. Alternatively, many QSRs and other restaurants will not source raw material fish from Russia or China, thus depriving consumers of any fish options on menus.

9. Many restaurants also use Pacific cod from Alaska to serve their guests. A shutdown of the ARM/KIF Transportation System could cause NFI members that harvest and process Alaska Pollock and cod to lose business from customers purchasing cod, as customers decide to shift their purchases away from Alaska seafood producers entirely.

10. Similarly, retailers source finished fish products (those in a form that we enjoy when eating at home) from processors that rely on deliveries of raw material fish only days before American workers begin to process that fish. Processors typically hold no more than a few weeks of inventory in reserve. Supply chain disruptions create logistical nightmares for manufacturing plants. Although fish logistics may not make news headlines in the same way that the global microchip shortage does, the same principle of just-in-time applies.

11. Restaurants and retailers in the U.S. will also face significant hardships, as they rely on frozen U.S. Pollock for just-in-time inventory systems. With the transport of frozen U.S.-harvested Pollock at a standstill, American processing companies will not be able to refill their supplies to restaurants and retailers, which, in turn, will render those outlets unable to fulfill their consumers' needs.

12. This disruption to the supply chain will also inflict serious harm on consumers, who will be deprived of U.S. harvested and processed seafood routinely supplied by NFI members that have utilized the ARM/KIF Transportation System. Consumers also will likely have to pay increased costs for Alaskan seafood products due to supply shortages and interruptions.

13. NFI has been informed by its members that utilize the ARM/KIF Transportation System that there are no alternative shipping options to move their volumes of product. There are numerous constraints in cold storage facilities and a lack of other viable means to transport seafood products to customers in the Eastern U.S.

14. I also want to emphasize that this disruption is occurring during a period when seafood processing facilities substantially increase their operations in preparation for next spring's Christian Lent observance. Beginning in September, annually, processors buy and process increased amounts of Alaska Pollock and Pacific cod to build inventories of finished fish products for the vitally important Lenten season, which represents about 25 percent of total annual seafood sales for some retailers and restaurants.

15. Further, this disruption is likely to cause businesses throughout the supply chain to lay off employees. Simply put, if raw material is not available in the coming few weeks, major fish processing plants will not have fish to process. Without raw material, manufacturing companies will be forced to lay off American workers. Downstream workers, such as truckers, warehouse workers, cold storage and logistics providers, and those in the surrounding communities, will also face economic harm.

16. The U.S. seafood industry, including the Alaska Pollock harvesters listed above, has suffered great damage since March 2020. These companies have incurred debilitating costs to protect their at-sea and shore-side workers from the pandemic while continuing the harvesting and processing operations necessary to feed American families. Supply disruptions such as a shutdown of the ARM/KIF Transportation System will further harm an industry that is only now recovering from the events of the last 17 months.

17. Moreover, the U.S. foodservice industry suffered catastrophic losses as a result of the pandemic. Restaurants of all sizes and all over the U.S. are beginning to open up, and foodservice distributors are beginning to fill the supply lines to service a return to the U.S. culture of enjoying seafood while out to dinner. Supply shortages and disruptions could not come at a worse time.

18. If the ARM/KIF Transportation System is not restarted, it is my belief that the Alaska seafood industry, other U.S. businesses further down the chain who are dependent on the Alaska seafood industry, and the American consumer will suffer extreme harm.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Dated: McLean, Virginia
August 29, 2021



John Connelly